IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 28859 of 2003(I)

PETITIONER:

SANKARAN SUKUMARAN, PLAMPARAMBIL HOUSE,
KUTHIRAPANTHY WARD, ALAPPUZHA -2.

BY ADV. SRI.K.K.SATHEESH.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE**
   SECRETARY, MINISTRY OF HOME AFFAIRS,
   FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAWAN,
   NEW DELHI-110003.

2. **STATE OF KERALA, REPRESENTED BY THE**
   SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION
   (FFP.A) DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.S.R.AJITH, ADDL.CGSC,
GOVT. PLEADER SRI. V.T.K. MOHANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.28859/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SALIENT FEATURES OF SSS PENSION SCHEME, 1980.

EXT.P.2: COPY OF THE ORDER OF SANCTION OF PENSION VIDE ORDER NO. R. DIS. 13817/72 DT. 28/12/72 ISSUED BY THE DISTRICT COLLECTOR, ALLEPPEY.

EXT.P.3: COPY OF THE LETTER NO. F6-2733/73 DTD. 0808/1975 ISSUED BY THE DISTRICT COLLECTOR ALAPPUZHA INVITING THE PETITIONER TO RECEIVE THE `TAMRA-PATHRA'.

EXT.P.4: COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM, ALONG WITH THE COVERING LETTER ISSUED BY THE SUPDT. OF CENTRAL PRISON, TRIVANDRUM DT. 13/11/1972.

EXT.P.5: COPY OF THE COMMUNICATION NO. 19 (3474)/73-FF.VIII DT. 08/08/1973 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.6: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DTD. 18/03/1998.

EXT.P.7: COPY OF THE CERTIFICATE ISSUED BY THE SUPDT. OF SUB JAIL, ALLEPPEY DT. 03/07/1973.

EXT.P.8: COPY OF THE CO-PRISONER CERTIFICATE ISSUED BY SRI. P.A. SOLOMON EX-M.P. DT. 21/08/1973.

EXT.P.9: COPY OF THE COMMUNICATION NO. H3911723/2001/D. DIS. DT. 15/03/2001 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P.10: COPY OF THE LETTER NO. 6/1/97-F (P) DT. 07/04/2003 ISSUED BY THE R.1. TO THE R.2.

EXT.P.11: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE R.2. DTD. 16/08/2003.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 28859 of 2003-I.

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Dated this the 14th day of August, 2007.

J U D G M E N T

The petitioner is aggrieved by the denial of pension under the Central Freedom Fighters Pension Scheme. He was an active participant in the Punnapra-Vayalar movement during the freedom struggle. His claim was based on two grounds; (a) under trial imprisonment in the Sub Jail, Alappuzha for a period of 11 months during the year 1946-'47 in connection with case No.P.E.7/1122 ME on the file of the Special Magistrate Court, Alappuzha and (b) proceedings for a period of six months pursuant to the conviction and sentence in connection with case No.CC.238/124 ME by the Divisional First Class Magistrate, Alappuzha at the Central Prison, Thiruvananthapuram.

2. Ext.P2 is the proceedings under which he was sanctioned pension by the State Government. He was also honoured with 'Thamrapatra' as early as on 15.8.1975 which is evident from Ext.P3 issued by the District Collector.

3. The petitioner applied for grant of Central pension as early as on 1.2.1973 producing the true extract of the convict register Ext.P4. By Ext.P5 it was informed by the Union Government that his case does not come under the purview of the pension scheme as he suffered imprisonment after

independence. It is evident that at that time Punnapra-Vayalar struggle was not recognised for grant of Central pension. But this was modified when the said movement was recognised by the Government of India for the purpose of grant of SSS pension with effect from 20.1.1998. Ext.P10 is the said communication. He submitted application Ext.P6 again. He had produced non-availability of records certificate issued by the Superintendent of Sub Jail, Alappuzha which is Ext.P7 herein. Again by Ext.P9 he was informed by the District Collector that the under trial imprisonment did not lead to the conviction and therefore it cannot be considered for grant of Central pension.

4. A similar issue involved herein was considered by a Full Bench of this Court in the decision reported in *Union of India v. Peter Devassia* [2003(1) KLT 467 (FB)]. It was held that, 'actual jail suffering during the trial of the case is imprisonment for the purpose of the scheme and it is immaterial whether the trial ended in conviction or acquittal. The purpose of Explanation 3 and the benefit intended to be conferred by that Explanation are quite evident from the words used therein. On the strength of the above Explanation, a freedom fighter who was convicted for participation in freedom struggle, is entitled to count his under-trial period towards actual suffering'. In the light of the above legal position the petitioner submitted a further representation Ext.P11. The petitioner seeks for various reliefs including quashing of Ext.P9.

5. In the counter-affidavit filed by the first respondent it is stated that the State Government has not forwarded the verification cum entitlement report to the first respondent so far. The 2nd respondent has also filed a counter-affidavit. In the counter-affidavit the stand taken is that there are discrepancies between the personal knowledge certificate of Sri.P.A.Solomon, Ex-M.P. and the convict register produced by the petitioner. It is further stated that the State Government has forwarded the pension application of the petitioner with copies of the report of the District Collector, Alappuzha for consideration of the Government of India as per letter No.34285/FFP A2/2004/GAD dated 10.11.2004. Hence it is necessary to examine the matter here. It is evident from the averments in the counter-affidavit that the State Government was relying upon the report of the District Collector stating that there are discrepancies in the personal knowledge certificate of Sri.P.A.Solomon, Ex-M.P. and the convict register produced. Ext.P4 is the extract of the convict register which shows the date of admission as 2 Chingam 1124. The date of sentence is 29 Karkkadakam 1125 and the date of expiry of sentence as 28 Makaram 1125. He was released on 26.1.1950. Ext.P8 is the certificate issued by Sri.P.A.Solomon, Ex-M.P., wherein he has stated that the petitioner had undergone imprisonment in the Sub Jail lockup at Alappuzha along with him in connection with the freedom struggle during 1946-47. Evidently the said certificate shows the under-trial period and not

the actual imprisonment after the conviction. Therefore, the District Collector has actually mixed up the actual jail term evidenced by the convict register and the under trial petition mentioned in the co-prisoner certificate issued by Sri.P.A.Solomon, Ex-M.P. Therefore, actually there is no discrepancy as stated by the State Government in the counter-affidavit.

6. Now going by Ext.P10, the Government of India has recognised the Punnappra-Vayalar struggle for the purpose of grant of pension even if the entire period of suffering was after independence. It is clear from Ext.P10 that the State Government has to forward verification report and the specific recommendation of the State Government about the entitlement of the pension. Exts.P5 and P9 are unsustainable and are hereby quashed.

7. Therefore what remains is the task of forwarding verification cum entitlement report of pension by the State Government to the Central Government with specific recommendation. Going by Ext.P10 the petitioner is entitled to rely upon the jail term itself for the purpose of grant of pension and not the under-trial period. Hence I direct the 2nd respondent to forward verification cum entitlement report of pension specifically recommending the case of the petitioner for grant of pension under the SSS pension scheme within a period of six weeks from the date of receipt of a copy of this judgment, since his jail terms is liable to be considered for grant of pension. The first respondent is directed to pass orders within three months from the

date of receipt of the report and recommendation from the State Government and grant pension accordingly. The claim of arrears of pension shall be considered from the date of receipt of Ext.P6 application dated 18.3.1998.

The writ petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-